

1 AN ACT relating to public-private partnerships.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 45.763 is amended to read as follows:

4 (1) Notwithstanding any statutory provisions to the contrary, any state agency as
5 defined in KRS 7A.010, institution of higher education defined as an institution in
6 KRS 164A.550, or affiliated corporation as defined in KRS 164A.550, shall obtain
7 authorization from the General Assembly prior to entering into an agreement
8 identified in subsection (2) of this section. The General Assembly authorization
9 shall occur only when the General Assembly enacts legislation specifically
10 authorizing the agreement.

11 (2) General Assembly authorization shall be required for an agreement for the use,
12 purchase, or acceptance of real property of any value, or equipment with a value in
13 excess of four hundred thousand dollars (\$400,000), if:

14 (a) The agreement provides that the state, a state agency, institution of higher
15 education, or affiliated corporation will become the owner of the real property
16 or equipment at any time; and

17 (b) All or any portion of the purchase price of the real property or equipment is
18 funded through the issuance of a financial instrument which requires payment
19 of principal and interest over time, including, but not limited to, notes, bonds,
20 securities, and certificates of participation, regardless of the identity of the
21 issuer.

22 **(3) (a) Authorization from the General Assembly under this section shall not be**
23 **required for capital projects utilizing the public-private partnership delivery**
24 **method.**

25 **(b) After negotiations between the contracting body and project partner are**
26 **complete but before beginning work on any capital projects authorized**
27 **under Section 2 of this Act, the contracting body shall report the project to**

the Capital Projects and Bond Oversight Committee for review and approval
in accordance with KRS 45.800.

➔Section 2. KRS 45A.077 is amended to read as follows:

- (1) A public-private partnership delivery method may be utilized as provided in this section and administrative regulations promulgated thereunder. State contracts using this method shall be awarded by competitive negotiation.
- (2) A contracting body utilizing a public-private partnership shall continue to be responsible for oversight of any function that is delegated to or otherwise performed by a private partner.
- (3) On or before December 31, 2016, the secretary of the Finance and Administration Cabinet shall promulgate administrative regulations setting forth criteria to be used in determining when a public-private partnership is to be used for a particular project. The administrative regulations shall reflect the intent of the General Assembly to promote and encourage the use of public-private partnerships in the Commonwealth. The secretary shall consult with design-builders, construction managers, contractors, design professionals including engineers and architects, and other appropriate professionals during the development of these administrative regulations.
- (4) A request for proposal for a project utilizing a public-private partnership shall include at a minimum:
 - (a) The parameters of the proposed public-private partnership agreement;
 - (b) The duties and responsibilities to be performed by the private partner or partners;
 - (c) The methods of oversight to be employed by the contracting body;
 - (d) The duties and responsibilities that are to be performed by the contracting body and any other partners to the contract;
 - (e) The evaluation factors and the relative weight of each to be used in the scoring

- 1 of awards;
- 2 (f) Plans for financing and operating the qualifying project and the revenues,
3 service payments, bond financings, and appropriations of public funds needed
4 for the qualifying project;
- 5 (g) Comprehensive documentation of the experience, capabilities, capitalization
6 and financial condition, and other relevant qualifications of the private entity;
- 7 (h) The ability of a private partner or partners to quickly respond to the needs
8 presented in the request for proposal, and the importance of economic
9 development opportunities represented by the qualifying project. In evaluating
10 proposals, preference shall be given to a plan that includes the involvement of
11 small businesses as subcontractors, to the extent that small businesses can
12 provide services in a competitive manner, unless any preference interferes
13 with the qualification for federal or other funds; and
- 14 (i) Other information required by the contracting body or the cabinet to evaluate
15 the proposals submitted by respondents and the overall proposed public-
16 private partnership.
- 17 (5) A private entity desiring to be a private partner shall demonstrate to the satisfaction
18 of the contracting body or the cabinet that it is capable of performing any duty,
19 responsibility, or function it may be authorized or directed to perform as part of the
20 public-private partnership agreement.
- 21 (6) When a request for proposal for a project utilizing a public-private partnership is
22 issued for a capital project, the contracting body shall transmit a copy of the request
23 for proposal to the Capital Projects and Bond Oversight Committee staff, clearly
24 identifying to the staff that a public-private partnership is being utilized.
- 25 (7) A request for proposal or other solicitation may be canceled, or all proposals may be
26 rejected, if it is determined in writing that the action is taken in the best interest of
27 the Commonwealth and approved by the purchasing officer.

- 1 (8) In the case of any public-private partnership for a capital project with an aggregate
2 value of twenty-five million dollars (\$25,000,000) or more, the project shall be
3 authorized by the General Assembly, by inclusion in the branch budget bill or by
4 any other means, explicitly identifying and authorizing the utilization of a public-
5 private partnership delivery method for the applicable capital project. The
6 authorization of a capital project required by this subsection is in addition to any
7 other statutorily required authorization for a capital project except for the
8 authorization required in Section 1 of this Act, which shall not apply to capital
9 projects utilizing the public-private partnership delivery method.
- 10 (9) Upon issuance of a public-private partnership agreement, the contracting body shall
11 submit the contract to the Government Contract Review Committee for review in
12 accordance with KRS 45A.690 to 45A.725. The contracting body shall ensure that
13 the contract clearly identifies to the committee that a public-private partnership is
14 being utilized. Upon disapproval of or objection to the contract by the committee,
15 the secretary of the Finance and Administration Cabinet in consultation with the
16 contracting body shall determine whether the contract shall be revised to comply
17 with the objections of the committee, be canceled, or remain in effect pursuant to
18 KRS 45A.705(6).
- 19 (10) Any corporation as described by KRS 45.750(2)(c), or as created under the
20 Kentucky Revised Statutes as a governmental agency and instrumentality of the
21 Commonwealth, that manages its capital construction program shall:
- 22 (a) Adhere to the administrative regulations promulgated under this section when
23 utilizing a public-private partnership for financing capital projects;
- 24 (b) Report to legislative committees as specified in this section; and
- 25 (c) Submit public-private partnership agreements issued by it to the General
26 Assembly for authorization as provided in subsection (8) of this section.
- 27 (11) (a) The governing body of a postsecondary institution that manages its capital

1 construction program under KRS 164A.580 shall:

- 2 1. Report to the Capital Projects and Bond Oversight Committee staff as
3 specified in this section; and
4 2. Not be required to comply with the provisions of subsection (9) of this
5 section.

6 (b) Any provision of a public-private partnership agreement issued by a
7 postsecondary institution which provides for a lease by or to the
8 postsecondary institution shall be valid and enforceable if approved by the
9 governing board of the institution.

10 (12) (a) A person or business may submit an unsolicited proposal to a governmental
11 body, which may receive the unsolicited proposal.

12 (b) Within ninety (90)~~thirty (30)~~ days of receiving an unsolicited proposal, a
13 governmental body may elect to consider further action on the proposal, at
14 which point the governmental body shall provide public notice of the
15 proposal, and shall:

- 16 1. Provide specific information regarding the proposed nature, timing, and
17 scope of the unsolicited proposal, except that trade secrets, financial
18 records, or other records of the person or business making the proposal
19 shall not be posted unless otherwise agreed to by the governmental body
20 and the person or business; and
21 2. Provide for a notice period of not less than thirty (30) and no more
22 than ninety (90) days for the submission of competing proposals. The
23 length of the notice period shall be determined by considering the
24 complexity of the unsolicited proposal that was initially submitted.

25 (c) Upon the end of the notice period provided under paragraph (b)2. of this
26 subsection, the governmental body may consider the unsolicited proposal and
27 any competing proposals received. If the governmental body determines it is

1 in the best interest of the Commonwealth to implement some or all of the
2 concepts contained within the unsolicited proposal or competing proposals
3 received by it, the governmental body may begin an open, competitive
4 procurement process to do so pursuant to this chapter.

- 5 (d) An unsolicited proposal shall be deemed rejected if no written response is
6 received from the governmental body within *ninety (90)*~~[sixty (60)]~~ days of
7 *submission, during which time the governmental body has not taken any*
8 *action on the proposal*~~[the end of the notice period provided]~~ under paragraph
9 (b)~~[2.]~~ of this subsection.

10 ➔Section 3. KRS 65.028 is amended to read as follows:

- 11 (1) As used in this section:

- 12 (a) "Best value" has the same meaning as in KRS 65.025;
13 (b) "Cabinet" means the Finance and Administration Cabinet;
14 (c) "Local government" means a city, county, charter county, urban-county
15 government, consolidated local government, or unified local government of
16 the Commonwealth;
17 (d) "Private partner" has the same meaning as in KRS 65.025; and
18 (e) "Public-private partnership" has the same meaning as in KRS 65.025.

- 19 (2) A public-private partnership delivery method may be utilized by a local government
20 as provided in this section and administrative regulations promulgated thereunder.
21 Contracts using this method shall be awarded by competitive negotiation on the
22 basis of best value, and shall in all cases take effect only if executed by the
23 legislative body of the local government. The provisions of KRS 65.025(2) to (4)
24 shall not apply to public-private partnerships utilized by local governments.

- 25 (3) A local government utilizing a public-private partnership shall continue to be
26 responsible for oversight of any function that is delegated to or otherwise performed
27 by a private partner.

- 1 (4) A public-private partnership shall not be used to circumvent any requirements or
2 restrictions placed upon any local government pursuant to any provision of the
3 Kentucky Revised Statutes.
- 4 (5) All public-private partnership agreements executed by a local government or any of
5 its agencies under this section shall be approved by the legislative body of the local
6 government at a public meeting, and shall include at a minimum the following
7 provisions:
- 8 (a) 1. Property owned by a local government shall not be sold, conveyed, or
9 disposed of in any way at any time; and
- 10 2. Leases issued by a local government to any party shall not be transferred
11 in any way by that party;
12 without the specific and express written consent of the legislative body of the
13 local government;
- 14 (b) Require the private partner to provide or cause to be provided performance
15 and payment bonds on the design and construction portion of the agreement as
16 required under KRS 45A.435 and maintenance bonds, warranties, guarantees,
17 and letters of credit in connection with the private partner's other activities
18 under the agreement, in the forms and amounts satisfactory to the local
19 government and in amounts necessary to provide adequate protection to the
20 local government;
- 21 (c) Review and approval of plans and specifications for the project by the local
22 government;
- 23 (d) Inspection of the project by the local government to ensure that the private
24 partner's actions are acceptable to the local government in accordance with the
25 agreement;
- 26 (e) Maintenance of public liability insurance or self-insurance, in form and
27 amount satisfactory to the local government and reasonably sufficient to

- 1 insure coverage of tort liability to the public and employees and to enable the
2 continued operation of the project;
- 3 (f) Reimbursement to be paid to the local government for services provided by
4 the local government;
- 5 (g) Filing of appropriate financial statements by the private partner on a periodic
6 basis;
- 7 (h) Policies and procedures governing the rights and responsibilities of the local
8 government and the private partner in the event the public-private partnership
9 agreement is terminated or there is a material default by the private partner.
10 These policies and procedures shall include conditions governing assumption
11 of the duties and responsibilities of the private partner by the local
12 government, and the transfer or purchase of property or other interests of the
13 private partner by the local government;
- 14 (i) Any fees or payments as may be established by agreement of the private
15 partner and the local government;
- 16 (j) A detailed description of all duties and requirements of the private partner;
- 17 (k) The ability of a private partner or partners to quickly respond to the needs
18 presented in the request for proposal, and the importance of economic
19 development opportunities represented by the qualifying project. In evaluating
20 proposals, preference shall be given to a plan that includes the involvement of
21 small businesses as subcontractors, to the extent that small businesses can
22 provide services in a competitive manner, unless any preference interferes
23 with the qualification for federal or other funds; and
- 24 (l) Any other information necessary to properly address the life cycle of the
25 agreement, including the disposition of assets if or when the public-private
26 partnership agreement is terminated or otherwise concludes.
- 27 (6) (a) On or before December 31, 2016, the secretary of the Finance and

1 Administration Cabinet shall promulgate administrative regulations setting
2 forth criteria to be used by a local government employing a public-private
3 partnership for a particular project, and establishing a process for public-
4 private partnership procurement undertaken by local governments consistent
5 with this section. Prior to submission of the proposed administrative
6 regulations pursuant to the regulatory process required by KRS Chapter 13A,
7 the proposed administrative regulations shall be approved by the Kentucky
8 Local Government Public-Private Partnership Board established by subsection
9 (11) of this section.

10 (b) The secretary shall consult with design-builders, construction managers,
11 contractors, design professionals including engineers and architects, and other
12 appropriate professionals during the development of these administrative
13 regulations.

14 (c) The secretary shall have the authority to contract with a consultant, pursuant
15 to KRS 45A.695, to assist the cabinet and the Kentucky Local Government
16 Public-Private Partnership Board with the review process required in
17 subsection (12) of this section. The secretary may, through administrative
18 regulation, impose a reasonable fee on the private partner to defray the cost of
19 the review required in subsection (12) of this section, including any expenses
20 or fees incurred in contracting with a consultant.

21 (d) If the secretary fails to timely promulgate administrative regulations pursuant
22 to this subsection, local governments may then act pursuant to this section
23 including compliance with the process outlined in subsection (12) of this
24 section, in the absence of administrative regulations.

25 (7) A request for proposal for a local government project utilizing a public-private
26 partnership shall include at a minimum:

27 (a) The parameters of the proposed public-private partnership agreement;

- 1 (b) The duties and responsibilities to be performed by the private partner or
2 partners;
- 3 (c) The methods of oversight to be employed by the local government;
- 4 (d) The duties and responsibilities that are to be performed by the local
5 government and any other partners to the contract;
- 6 (e) The evaluation factors and the relative weight of each to be used in the scoring
7 of awards; and
- 8 (f) Other information required by a local government to evaluate the proposals
9 submitted by respondents and the overall proposed public-private partnership.
- 10 (8) A private entity desiring to be a private partner shall demonstrate to the satisfaction
11 of the local government that it is capable of performing any duty, responsibility, or
12 function it may be authorized or directed to perform as part of the public-private
13 partnership agreement.
- 14 (9) When a request for proposal for a project utilizing a public-private partnership is
15 issued, the local government shall transmit a copy of the request for proposal to the
16 cabinet and to the Department for Local Government.
- 17 (10) A request for proposal or other solicitation may be canceled, or all proposals may be
18 rejected, if it is determined in writing that the action is taken in the best interest of
19 the local government and approved by the legislative body.
- 20 (11) (a) There is established within the cabinet the Kentucky Local Government
21 Public-Private Partnership Board, composed of eleven (11) members as
22 follows:
- 23 1. The secretary of the cabinet, or the secretary's designee;
- 24 2. Two (2) individuals appointed by the Kentucky League of Cities, both of
25 whom shall have experience in municipal financial operations;
- 26 3. Two (2) individuals appointed by the Kentucky Association of Counties,
27 both of whom shall have experience in county financial operations, one

- 1 (1) to be recommended by the Kentucky County Judge/Executive
2 Association and one (1) to be recommended by the Kentucky County
3 Magistrates and Commissioners Association;
- 4 4. The commissioner of the Department for Local Government, or the
5 commissioner's designee;
- 6 5. The executive director of the Office of Financial Management within the
7 cabinet, or the executive director's designee;
- 8 6. The Auditor of Public Accounts, or the Auditor's designee;
- 9 7. One (1) citizen member appointed by the Governor, who shall have
10 experience and knowledge in local government debt and financial
11 operations; and
- 12 8. Two (2) members of the Kentucky General Assembly, one (1) appointed
13 by the President of the Senate and one (1) appointed by the Speaker of
14 the House of Representatives, each of whom shall serve in a nonvoting
15 ex officio capacity and shall not be considered for purposes of
16 determining a quorum.
- 17 (b) Members of the board shall begin their terms on August 1, 2016, and shall
18 serve for a term of four (4) years.
- 19 (c) **Board members appointed under paragraph (a)2. and 3. of this subsection**
20 **may send a designee with similar experience to meetings for which they are**
21 **unavailable.**
- 22 **(d)** Vacancies occurring in the term of any member shall be filled in the same
23 manner as the original appointment.
- 24 **(e)**~~(d)~~ The members of the board shall receive no compensation for their
25 services.
- 26 **(f)**~~(e)~~ The secretary of the cabinet, or the secretary's designee, shall serve as
27 chair of the board and the members shall elect a vice chair from among the

1 membership of the board. The vice chair may preside over meetings of the
2 board in the absence of the chair.

3 ~~(g)~~~~(f)~~ The board shall meet at least once per year, and as needed for the timely
4 consideration of proposed projects. A majority of the members of the board
5 shall constitute a quorum.

6 ~~(h)~~~~(g)~~ The secretary of the cabinet shall be responsible for providing staff
7 support and maintaining complete records of the board's actions and
8 proceedings, as public records open to inspection.

9 (12) (a) Upon the initial issuance of a public-private partnership agreement having a
10 total contractual value that equals or exceeds thirty percent (30%) of the
11 general fund revenues received by the local government in the immediately
12 preceding fiscal year, the local government shall submit the agreement to the
13 cabinet for the sole purpose of making an evaluation to the Kentucky Local
14 Government Public-Private Partnership Board of the following:

- 15 1. Whether the agreement meets the requirements of subsection (5) of this
16 section;
- 17 2. An analysis of the overall project's economic and financial viability
18 within the scope of available or proposed financing arrangements and
19 expected revenues; and
- 20 3. Whether the agreement adheres to the procurement process required by
21 subsection (2) of this section.

22 Public-private partnership agreements having a total contractual value that is
23 less than thirty percent (30%) of the general fund revenues received by the
24 local government in the immediately preceding fiscal year shall not be
25 required to be submitted to the cabinet or the Kentucky Local Government
26 Public-Private Partnership Board.

27 (b) The local government shall submit any information required by the cabinet,

1 relating to the agreement and its procurement, to enable the cabinet to conduct
2 this evaluation.

3 (c) The cabinet shall acknowledge receipt of the agreement within thirty (30)
4 days, and after evaluation thereof shall, within ninety (90) days of its receipt,
5 forward the results of its evaluation separately to each individual member of
6 the Kentucky Local Government Public-Private Partnership Board. The full
7 board shall meet within sixty (60) days of the issuance of the cabinet's
8 evaluation to consider the evaluation provided by the cabinet and approve or
9 disapprove the proposed agreement. If the board disapproves the project, the
10 board shall provide specific reasons for its disapproval. If the board approves
11 the project, the cabinet shall return the agreement to the local government
12 legislative body for final execution thereof. No public-private partnership
13 agreement issued by a local government that is subject to evaluation by the
14 cabinet and review and approval by the Kentucky Local Government
15 Public-Private Partnership Board pursuant to paragraph (a) of this
16 subsection shall take effect unless and until it is approved by the Kentucky
17 Local Government Public-Private Partnership Board pursuant to this
18 subsection and is found by the board to meet the requirements of this section
19 and to be economically viable as provided in this subsection.

20 (d) If an agreement is not approved by the board, the local government submitting
21 the agreement may modify the agreement and resubmit it for reconsideration
22 in accordance with this section.

23 (13) The Commonwealth shall bear no liability for public-private partnership agreements
24 approved pursuant to subsection (12) of this section.

25 (14) Upon approval and execution of a public-private partnership agreement, the local
26 government shall transmit a copy of the agreement to the Department for Local
27 Government.

- 1 (15) The Auditor of Public Accounts may periodically review public-private partnership
2 agreements executed by a local government pursuant to this section, and any actions
3 undertaken by private partners and local governments thereunder, to evaluate
4 compliance with the agreement and this section.
- 5 (16) Multiple local governments, acting in accordance with KRS 65.210 to 65.300, may
6 jointly enter into a public-private partnership pursuant to this section. Public-private
7 partnership agreements involving multiple local governments shall only be required
8 to be submitted to the cabinet for evaluation and to the Kentucky Local
9 Government Public-Private Partnership Board for review and approval, as
10 provided by subsection (12) of this section, if the total contractual value equals or
11 exceeds thirty percent (30%) of the combined general fund revenues received in the
12 immediately preceding fiscal year by all local governments participating in the
13 agreement.
- 14 (17) (a) A person or business may submit an unsolicited proposal to a local
15 government, which may receive the unsolicited proposal.
- 16 (b) Within ninety (90)~~thirty (30)~~ days of receiving an unsolicited proposal, a
17 local government may elect to consider further action on the proposal, at
18 which point the local government shall provide public notice of the proposal
19 pursuant to KRS Chapter 424 or electronically on the Web site of the local
20 government, and shall:
- 21 1. Provide specific information regarding the proposed nature, timing, and
22 scope of the unsolicited proposal, except that trade secrets, financial
23 records, or other records of the person or business making the proposal
24 shall not be posted unless otherwise agreed to by the local government
25 and the person or business; and
- 26 2. Provide for a notice period of not less than thirty (30) and no more
27 than ninety (90) days for the submission of competing proposals. The

1 length of the notice period shall be determined by considering the
2 complexity of the unsolicited proposal that was initially submitted.

3 (c) Upon the end of the notice period provided under paragraph (b)2. of this
4 subsection, the local government may consider the unsolicited proposal and
5 any competing proposals received. If the local government determines it is in
6 the best interest of the local government to implement some or all of the
7 concepts contained within the unsolicited proposal or competing proposals
8 received by it, the local government may begin an open, competitive
9 procurement process to do so pursuant to this section.

10 (d) An unsolicited proposal shall be deemed rejected if no written response is
11 received from the local government within ninety (90)~~sixty (60)~~ days after
12 submission, during which time the governmental body has not taken any
13 action on the proposal~~[of the end of the notice period provided]~~ under
14 paragraph (b)~~[2.]~~ of this subsection.

15 ➔Section 4. KRS 175B.015 is amended to read as follows:

16 (1) The Kentucky Public Transportation Infrastructure Authority is hereby established
17 as an independent de jure municipal corporation and political subdivision of the
18 Commonwealth constituting a governmental agency and instrumentality of the
19 Commonwealth. The General Assembly hereby finds and declares that in carrying
20 out its functions, powers, and duties as prescribed in this chapter, the state authority
21 will be performing essential public and government functions that improve the
22 public welfare and prosperity of the people of the Commonwealth by promoting the
23 availability of and enhancing accessibility to improved transportation services
24 within the Commonwealth.

25 (2) (a) The state authority shall be composed of the following eleven (11) voting
26 members:

27 1. The secretary of the Finance and Administration Cabinet, or the

- 1 secretary's designee;
- 2 2. The secretary of the Transportation Cabinet;
- 3 3. A representative of the Kentucky Association of Counties, to be
- 4 appointed by the Governor;
- 5 4. A representative of the Kentucky County Judges/Executive Association,
- 6 to be appointed by the Governor;
- 7 5. A representative of the Kentucky League of Cities, to be appointed by
- 8 the Governor; and
- 9 6. Six (6) citizen members to be appointed by the Governor and confirmed
- 10 by the Senate in accordance with KRS 11.160, at least two (2) of whom
- 11 shall be familiar with road and bridge design or the financing and
- 12 administration of transportation infrastructure projects; and
- 13 (b) Each Kentucky member who shares duties as a presiding officer of a bi-state
- 14 authority pursuant to KRS 175B.030(4)(a)3. shall serve as a nonvoting ex
- 15 officio member.
- 16 (3) The ex officio members shall serve for the term of their respective offices.
- 17 (4) Members appointed pursuant to subsection (2)(a)3. to 6. of this section shall begin
- 18 their terms on October 1, 2009, and shall be appointed for a term of four (4) years;
- 19 however, in making initial appointments, the members appointed pursuant to
- 20 subsection (2)(a)6. of this section shall include two (2) members for a term of two
- 21 (2) years, two (2) members for a term of three (3) years, and two (2) members for a
- 22 term of four (4) years.
- 23 (5) Vacancies occurring during the term of any member shall be filled in the same
- 24 manner as the original appointment.
- 25 (6) The members of the state authority shall receive no compensation for their services,
- 26 but shall be entitled to reimbursement for all reasonable expenses necessary and
- 27 incidental to the performance of their duties and functions as members of the state

1 authority.

2 (7) (a) Members of the state authority shall be considered public servants subject to
3 KRS Chapter 11A.

4 (b) The following individuals or entities shall be prohibited from entering into
5 any contract or agreement with the state authority:

6 1. Any member of the state authority, a project authority, or a bi-state
7 authority;

8 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member
9 of the state authority, a project authority, or a bi-state authority; and

10 3. Any corporation, limited liability entity, or other business entity of
11 which a person identified in subparagraph 1. or 2. of this paragraph is an
12 owner, member, or partner or has any other ownership interest.

13 (8) (a) The chairman of the state authority shall be the secretary of the Transportation
14 Cabinet.

15 (b) The members of the state authority shall elect a vice chairman and a secretary
16 from the membership.

17 (9) The Finance and Administration Cabinet shall provide fiscal consultant services to
18 the state authority.

19 (10) The state authority shall hold its initial meeting no later than November 1, 2009,
20 and shall meet as needed thereafter, ~~for at least quarterly if any bi-state authority or~~
21 ~~project authority exists,~~ with adequate notice at the call of the chair. A quorum of
22 at least fifty percent (50%) of the members of the state authority must be present for
23 the state authority to take any action. At least eight (8) members shall vote in the
24 affirmative for the state authority to approve a new project. All other business shall
25 be approved by a majority vote of the members present.

26 (11) (a) The state authority shall be attached for administrative purposes to the
27 Transportation Cabinet. The state authority shall establish and maintain an

1 office, and the secretary of the state authority shall maintain complete records
2 of the state authority's actions and proceedings as public records open to
3 inspection.

4 (b) The state authority shall employ staff as needed in the conduct of its duties
5 and functions, and shall fix their compensation.

6 (12) The state authority may promulgate administrative regulations in accordance with
7 KRS Chapter 13A as needed:

8 (a) Establishing collection and enforcement procedures, including fines, charges,
9 assessments, and other enforcement mechanisms, for the violation of KRS
10 175B.040(4), and for violation of any administrative regulation promulgated
11 under this subsection;

12 (b) Establishing an appeals process by which a person may contest a violation of
13 KRS 175B.040(4), or a violation of any administrative regulation promulgated
14 under this subsection, by way of an administrative hearing to be conducted in
15 accordance with KRS Chapter 13B;

16 (c) Relating to any matters necessary to the efficient administration of tolls when
17 implemented for a project developed under this chapter; and

18 (d) To fulfill any other requirements of this chapter.

19 (13) The state authority shall comply with applicable provisions of KRS Chapter 45A in
20 the development of a project and the procurement of goods and services.

21 (14) The records of the state authority shall be considered open records pursuant to KRS
22 61.870 to 61.884.

23 (15) The meetings of the state authority shall be considered open meetings pursuant to
24 KRS 61.805 to 61.850.

25 ➔Section 5. KRS 175B.020 is amended to read as follows:

26 (1) The state authority's primary purpose shall be to facilitate the construction,
27 financing, operation, and oversight of projects by entering into bi-state agreements

1 and by creating bi-state authorities, project authorities, and public-private
2 partnerships. To accomplish these purposes, the state authority shall have the power
3 and duty to:

4 (a) Take the following actions relating to a bi-state authority authorized pursuant
5 to KRS 175B.030:

- 6 1. To enter into a bi-state agreement;
- 7 2. To review and approve project financing plans and development
8 agreements; and
- 9 3. To monitor agreements entered into by bi-state authorities;

10 (b) Take the following actions relating to a project authority authorized pursuant
11 to KRS 175B.035:

- 12 1. To request establishment of a project authority;
- 13 2. To review and approve project financing plans and development
14 agreements;
- 15 3. To monitor activities of project authorities; and
- 16 4. To enter into an agreement with the project authority; and

17 (c) Take the following actions relating to a public-private partnership authorized
18 pursuant to KRS 175B.037:

- 19 1. To request establishment of a public-private partnership;
- 20 2. To review and approve project financing plans;
- 21 3. To monitor activities of public-private partnerships; and
- 22 4. To enter into an agreement as a part of or with a public-private
23 partnership, if necessary.

24 (2) The state authority, when authorized pursuant to subsection (10) of this section,
25 may participate as a developing or issuing authority, or both, in the development,
26 construction, or financing of a project by a bi-state or project authority, or by a
27 public-private partnership, if necessary. If the state authority participates as a

1 developing or issuing authority, the state authority shall have the powers and duties
2 established in KRS 175B.025 as they apply to that project.

3 (3) The state authority, as a function of its oversight of any other authority created
4 pursuant to this chapter, shall report before the first issuance of bonds and no less
5 than semiannually thereafter to the Capital Projects and Bond Oversight Committee
6 and to the Interim Joint Committee on Appropriations and Revenue of the
7 Legislative Research Commission, on any projects currently proposed or under
8 development by each authority. Current and proposed levels of bonding for each
9 project shall be reviewed by the Capital Projects and Bond Oversight Committee in
10 accordance with KRS 45.794 before the bonds shall be issued.

11 (4) The state authority, when proposing a project pursuant to this chapter, shall to the
12 extent practical consult with the officials representing the units of local government
13 in which the proposed project is to be located in order to obtain the advice and input
14 on the local impact of the proposed project, including information regarding land
15 use planning, transportation planning, economic development, and any other factors
16 having a direct impact to the local community.

17 (5) The state authority may receive an unsolicited proposal if the proposal contains:

18 (a) An executive summary of no more than three (3) pages that details the
19 revenue source for the proposed project, the amount of revenue expected to be
20 generated by the project, and the project costs;

21 (b) A certification from a financial expert stating that the contents of the
22 unsolicited proposal are true and correct; and

23 (c) A fee for the review of the executive summary~~[A commitment to pay the~~
24 ~~costs incurred by the state authority and the cabinet for evaluating the~~
25 ~~unsolicited proposal].~~

26 (6) The state authority shall respond to a person offering an unsolicited proposal
27 notifying the person that the proposal has been rejected or approved for further

1 review.

2 (7) If the state authority approves an unsolicited proposal for further review, the state
3 authority shall independently verify that it is in the best interest of the
4 Commonwealth.

5 (8) *If the state authority approves a proposal for further review, the*^[A] person
6 making *the*^[an] unsolicited proposal shall pay all costs of evaluating the unsolicited
7 proposal incurred by the state authority and the cabinet *pursuant to an agreement*
8 *negotiated between the state authority and the person making the unsolicited*
9 *proposal.*

10 (9) If the state authority and the cabinet agree that an unsolicited proposal is in the best
11 interest of the Commonwealth, the state authority, with the assistance of the cabinet,
12 shall begin a competitive procurement process to implement some or all of the
13 concepts contained in the unsolicited proposal.

14 (10) (a) Notwithstanding any other provision of this chapter, the following actions
15 shall not take effect until ratified by the General Assembly:

- 16 1. The creation of a bi-state authority;
17 2. The creation of a project authority;
18 3. The creation of a public-private partnership;
19 4. The modification or amendment of the scope of any project; and
20 5. The development of any project undertaken entirely by the state
21 authority.

22 (b) If any action described in paragraph (a) of this subsection is not ratified by the
23 General Assembly, the creation, approval, or modification shall be considered
24 void.

25 *(11) The state authority shall promulgate an administrative regulation in accordance*
26 *with KRS Chapter 13A to determine the fee required by paragraph (c) of*
27 *subsection (5) of this section for the review of the executive summary.*

1 government in which the project is located. The four (4) local government
2 appointees shall be residents of the county in which the project is located. If a
3 project is located in a consolidated local government, no more than two (2)
4 appointees shall reside in the same Kentucky senatorial district. If portions of
5 the project are located in more than one (1) local government, the chief
6 executive of the county or consolidated local government having the largest
7 population shall make the appointments authorized in this paragraph.

8 (c) Any proposed agreement to establish a bi-state authority shall be presented to
9 the state authority for approval. If the state authority approves the agreement,
10 it shall be submitted to the General Assembly for ratification. If the agreement
11 is ratified by the General Assembly, the state authority shall authorize the
12 establishment of a bi-state authority and shall enter into an agreement with the
13 adjoining state for the creation of a bi-state authority.

14 (3) (a) Kentucky members of a proposed bi-state authority who are appointed by the
15 Governor shall be confirmed by the Senate in accordance with KRS 11.160.
16 Members appointed by the chief executive of the local government shall be
17 confirmed by the governing body of the local government.

18 (b) At least two (2) of the Governor's appointees and two (2) of the chief
19 executive's appointees shall be familiar with road and bridge design or
20 financing and administration of transportation infrastructure projects.

21 (c) Members of a bi-state authority appointed by the Governor shall serve for four
22 (4) years, except that initial appointments shall be as follows:

- 23 1. One (1) appointee shall serve a term of two (2) years;
- 24 2. One (1) appointee shall serve a term of three (3) years; and
- 25 3. One (1) appointee shall serve a term of four (4) years.

26 (d) The governing body of the local government requesting formation of the bi-
27 state authority shall, by resolution, establish term lengths for the initial and

1 succeeding members who are locally appointed, with each term not to exceed
2 four (4) years.

3 (e) Members of a bi-state authority representing the Commonwealth may be
4 reappointed upon the expiration of their terms. Members reappointed shall be
5 reconfirmed in the same manner as newly appointed members.

6 (4) (a) An agreement establishing a bi-state authority shall at a minimum:

- 7 1. Establish the total number of members of the bi-state authority;
- 8 2. Establish staffing and funding to support the work of the bi-state
9 authority;
- 10 3. Designate the process for selecting a presiding officer of the bi-state
11 authority, which shall include a requirement that a member from each
12 state share the duties of presiding; and
- 13 4. Require the approval of a majority of the members from each state
14 before any action may be taken or any change may be made by the bi-
15 state authority.

16 (b) A bi-state authority created pursuant to this section shall take the legal form
17 necessary to conform to the laws of both states. The Commonwealth shall
18 consider the bi-state authority to be an independent de jure municipal
19 corporation, constituting a governmental agency and instrumentality of the
20 appropriate jurisdictions. The bi-state authority shall adopt a name indicative
21 of its location and purpose.

22 (c) Any bi-state agreement approved pursuant to this section may be presented to
23 the United States Congress for consent thereof by joint resolution as provided
24 in Article 1, Section 10, Clause 3 of the United States Constitution.

25 (5) (a) Members of a bi-state authority appointed from the Commonwealth shall be
26 considered public servants subject to KRS Chapter 11A.

27 (b) Members of a bi-state authority appointed from the Commonwealth shall

1 receive no compensation for their services, but shall be entitled to
2 reimbursement for all reasonable expenses necessary and incidental to the
3 performance of their duties and functions as members of the bi-state authority.

4 (c) The following individuals or entities shall be prohibited from entering into
5 any contract or agreement with a bi-state authority or a public-private
6 partnership:

- 7 1. Any member of the bi-state authority appointed to represent the
8 Commonwealth or any member of the state authority, a project authority,
9 or a public-private partnership;
- 10 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member
11 of the bi-state authority appointed to represent the Commonwealth or
12 any spouse, child, stepchild, parent, stepparent, or sibling of a member
13 of the state authority, a project authority, or a public-private partnership;
14 and
- 15 3. Any corporation, limited liability entity, or other business entity of
16 which a person identified in subparagraph 1. or 2. of this paragraph is an
17 owner, member, or partner or has any other ownership interest.

18 (d) A bi-state authority or public-private partnership shall comply with the
19 procurement laws of both states that are a party to the agreement creating the
20 bi-state authority or public-private partnership, including the provisions of
21 KRS Chapter 45A, in the development of a project and the procurement of
22 goods and services.

23 (e) A bi-state authority or public-private partnership shall comply with the laws of
24 both states concerning the inspection and disclosure of public records,
25 including KRS 61.870 to 61.884.

26 (f) A bi-state authority or public-private partnership shall comply with the laws of
27 both states concerning the conduct of open meetings, including KRS 61.805 to

1 61.850.

- 2 (6) (a) Prior to the execution of any agreements for the construction of the project,
3 the state authority, the bi-state authority, a public-private partnership, or any
4 combination of these, if appropriate, shall prepare a financial plan specifying
5 the construction and financing parameters of the project, including:
- 6 1. A timeline for construction of the project, including financing
7 requirements throughout the construction of the project;
 - 8 2. The amount and duration of per-vehicle tolls;
 - 9 3. Expected appropriations from the General Assembly to be used for
10 project costs; however, no financial plan shall be submitted or approved
11 which seeks or purports to bind any future General Assembly to
12 appropriate any moneys~~[contains expected appropriations by the~~
13 ~~General Assembly]~~ beyond those appropriated in the most recently
14 enacted biennial highway construction plan;
 - 15 4. Other sources of funds and expected amounts; and
 - 16 5. Other provisions relating to the construction and financing of the
17 project.
- 18 (b) 1. If the financial plan is prepared by a bi-state authority, the Kentucky
19 members of the bi-state authority shall consult with the involved local
20 governments in Kentucky, the department, and the Finance and
21 Administration Cabinet, Office of Financial Management, during the
22 development of the financial plan. Upon completion and approval of the
23 financial plan by the bi-state authority, the plan shall be submitted to the
24 state authority for approval.
- 25 2. If the financial plan is prepared by the state authority, the state authority
26 shall consult with the involved local governments in Kentucky, the
27 department, and the Finance and Administration Cabinet, Office of

- 1 Financial Management, during the development of the financial plan. If
2 the financial plan is viable based on all information available to the state
3 authority, the state authority shall recommend the plan.
- 4 3. If the financial plan is prepared by a public-private partnership, the
5 public-private partnership shall consult with the involved local
6 governments in Kentucky, the department, and the Finance and
7 Administration Cabinet, Office of Financial Management, during the
8 development of the financial plan. Upon completion and approval of the
9 financial plan by the public-private partnership, the plan shall be
10 submitted to the state authority for approval.
- 11 (c) The state authority shall not approve or recommend a financial plan which
12 seeks or purports to bind any future General Assembly to appropriate any
13 moneys~~[contains expected appropriations by the General Assembly]~~ beyond
14 those appropriated in the most recently enacted biennial highway construction
15 plan. If the financial plan is approved or recommended by the state authority,
16 the cabinet and, as necessary, other state agencies or local governments may
17 enter into a development agreement as provided in subsection (7) of this
18 section with all necessary parties for the development of a project.
- 19 (d) Every financial plan prepared pursuant to this section shall include an
20 evaluation of the ability of a potential contractor or service provider to quickly
21 respond to the needs presented in a major transportation project, and the
22 importance of economic development opportunities represented by the
23 construction of any project under this chapter. In evaluating proposals,
24 preference shall be given to a plan that includes the involvement of small
25 businesses as subcontractors, to the extent that small businesses can provide
26 services in a competitive manner, unless any preference interferes with the
27 qualification for federal funds.

- 1 (7) (a) Upon approval or recommendation of the financial plan as provided in
2 subsection (6) of this section, a development agreement may be entered into
3 establishing the terms and conditions under which a project will be undertaken
4 and the duties, responsibilities, powers, and authorities of the parties to the
5 agreement. The development agreement shall, at a minimum:
- 6 1. Require the bi-state authority or public-private partnership to submit an
7 annual report to the cabinet and the Legislative Research Commission;
 - 8 2. Require that an annual audit of the bi-state authority or public-private
9 partnership be performed by a certified public accountant;
 - 10 3. Include the relevant provisions from the financial plan required by
11 subsection (6) of this section;
 - 12 4. Include provisions detailing the duties, responsibilities, and obligations
13 of each party in relation to the financing, development, operation, and
14 maintenance of the project, and the servicing and retirement of all
15 bonds;
 - 16 5. Establish limits on any reserve funds created for operation, maintenance,
17 or bond servicing, which shall be at a level to adequately operate and
18 maintain the project and ensure proper bond servicing;
 - 19 6. Prohibit the amendment of the project or the financial plan without the
20 prior evaluation and approval by the state authority. No amendment shall
21 be approved that seeks or purports to bind any future General
22 Assembly to appropriate any moneys~~provides for expected~~
23 ~~appropriations by the General Assembly~~ beyond those appropriated in
24 the most recently enacted biennial highway construction plan;
 - 25 7. If applicable, establish a process for the transfer of ownership of the
26 portion of the project that is within the Commonwealth to the
27 Commonwealth upon retirement of all bonds associated with the project

1 or, if the project utilizes a public-private partnership, upon termination
2 of that partnership; and

3 8. a. For a bi-state authority, require the approval of a majority of the
4 members from each state before any action may be taken or any
5 changes may be made by the bi-state authority; or

6 b. For a public-private partnership, require approval of the cabinet
7 before any action may be taken or any changes may be made by the
8 public-private partnership.

9 (b) The parties to the agreement from the Commonwealth shall consult with the
10 department and the Finance and Administration Cabinet, Office of Financial
11 Management, in the development of the agreement.

12 (c) Additional agreements may be executed, as necessary to complete the project.

13 (d) The development agreement may take the form of a public-private partnership
14 agreement.

15 (8) The General Assembly hereby finds and declares that in carrying out the functions,
16 powers, and duties as prescribed in this chapter, a bi-state authority or public-
17 private partnership authorized under this section will be performing essential public
18 and government functions that improve the public welfare and prosperity of the
19 people of the Commonwealth by promoting the availability of and enhancing
20 accessibility to improved transportation services within the Commonwealth.

21 (9) The state authority shall not enter into a public-private partnership related to a
22 project connecting the Commonwealth with the State of Ohio unless the General
23 Assembly expressly authorizes it by passing a joint resolution.

24 ➔Section 7. KRS 175B.035 is amended to read as follows:

25 (1) Potential projects that are within Kentucky may be developed by a project authority
26 as provided in this section, or by a public-private partnership as provided in KRS
27 175B.037.

- 1 (2) A local government that contains a portion of a proposed project may, by resolution
2 of its governing body, request the state authority to evaluate the establishment of a
3 project authority or a public-private partnership for the purpose of developing a
4 project.
- 5 (3) The state authority may request that the department evaluate the proposed project by
6 preparation of a financial plan evaluating all aspects of the proposed project,
7 including:
- 8 (a) The most effective location for the project;
 - 9 (b) The impact on local governments and citizens at the location of or along the
10 path of the project;
 - 11 (c) A detailed analysis of the proposed cost of the project;
 - 12 (d) The potential economic impact to the areas affected by the project;
 - 13 (e) The anticipated level of use of the project;
 - 14 (f) The amount and duration of per-vehicle tolls;
 - 15 (g) Expected appropriations from the General Assembly to be used for the
16 project; however, no financial plan shall be submitted or approved which
17 seeks or purports to bind any future General Assembly to appropriate any
18 moneys~~[contains expected appropriations by the General Assembly]~~ beyond
19 those appropriated in the most recently enacted biennial highway construction
20 plan;
 - 21 (h) The ability of a potential contractor or service provider to quickly respond to
22 the needs presented in a major transportation project, and the importance of
23 economic development opportunities represented by the construction of any
24 project under this chapter. In evaluating proposals, preference shall be given
25 to a plan that includes the involvement of small businesses as subcontractors,
26 to the extent that small businesses can provide services in a competitive
27 manner, unless any preference interferes with the qualification for federal

1 funds;

2 (i) Other sources of funds and expected amounts; and

3 (j) Any other provisions relating to the construction and financing of the project.

4 (4) If, based on the project evaluation prepared pursuant to subsection (3) of this
5 section, the state authority and the department determine that the development of
6 the project is economically feasible, the state authority shall submit the proposal to
7 the General Assembly for ratification. If ratified by the General Assembly, the state
8 authority may request that the Governor establish a project authority in accordance
9 with the following:

10 (a) The project authority shall be established as an independent de jure municipal
11 corporation and political subdivision of the Commonwealth constituting a
12 governmental agency and instrumentality of the Commonwealth, with the
13 power to contract and be contracted with, acquire and convey property, sue
14 and be sued, and exercise all of the usual powers of corporations not
15 inconsistent with the authority's specifically enumerated purpose and duties;

16 (b) The project authority shall adopt a name that includes the name of the project
17 and the words "Project Authority";

18 (c) The project authority shall be composed of seven (7) members, three (3) of
19 whom shall be appointed by the Governor and confirmed by the Senate in
20 accordance with KRS 11.160, and four (4) of whom shall be appointed by the
21 chief executive of the local government that requested establishment of the
22 project authority and confirmed by resolution of the local government's
23 governing body;

24 (d) Each member of the project authority shall be appointed for a period of four
25 (4) years, except that in making initial appointments, the Governor shall
26 appoint members for one (1), three (3), and four (4) years, and the chief
27 executive shall appoint two (2) members each for two (2) and four (4) years;

1 and

2 (e) At least one (1) of the Governor's appointees and two (2) of the chief
3 executive's appointees shall be familiar with road and bridge design or
4 financing and administration of transportation infrastructure projects.

5 (5) (a) Within ninety (90) days of its establishment under subsection (4) of this
6 section, the project authority shall convene and organize. The project authority
7 shall elect a chair and a vice chair, who shall be members of the project
8 authority and elected by a majority of the project authority members. The
9 project authority shall appoint a secretary and a treasurer who shall not be
10 members of the project authority, each of whom shall serve at the pleasure of
11 the project authority and shall receive compensation as determined and paid
12 by the project authority.

13 (b) The treasurer shall give bond in an amount prescribed by the project authority
14 to the project authority and the state conditioned upon a faithful accounting
15 for all the funds coming into the treasurer's custody, with corporate surety
16 given by a surety company qualified to do business in the state, the premium
17 of which shall be paid by the project authority.

18 (c) The project authority shall maintain an office, and the secretary of the project
19 authority shall maintain in that office complete records of all the project
20 authority's actions and proceedings, which shall be considered open records
21 under KRS 61.870 to 61.884.

22 (d) A project authority shall comply with the applicable provisions of KRS
23 Chapter 45A in the development of a project and the procurement of goods
24 and services.

25 (e) The meetings of a project authority shall be considered open meetings
26 pursuant to KRS 61.805 to 61.850.

27 (6) A majority of the members of a project authority shall constitute a quorum for the

1 transaction of business. The members of a project authority shall receive no
2 compensation for their services in that capacity, but shall be entitled to
3 reimbursement for all reasonable expenses necessarily incurred in connection with
4 performance of their duties and functions as members.

5 (7) (a) Members of a project authority shall be considered public servants subject to
6 the provisions of KRS Chapter 11A.

7 (b) The following individuals or entities shall be prohibited from entering into
8 any contract or agreement with a project authority or a public-private
9 partnership:

10 1. Any member of a project authority, a bi-state authority, the state
11 authority, or a public-private partnership;

12 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member
13 of a project authority, a bi-state authority, the state authority, or a public-
14 private partnership; and

15 3. Any corporation, limited liability entity, or other business entity of
16 which a person identified in subparagraph 1. or 2. of this paragraph is an
17 owner, a member, a partner, or has any other ownership interest.

18 (8) (a) The state authority shall enter into a development agreement with a project
19 authority or a public-private partnership to establish the terms and conditions
20 under which a project will be undertaken. No financial plan shall be submitted
21 or approved which seeks or purports to bind any future General Assembly to
22 appropriate any moneys~~[contains expected appropriations by the General~~
23 ~~Assembly]~~ beyond those appropriated in the most recently enacted biennial
24 highway construction plan.

25 (b) The development agreement shall establish the duties, responsibilities, and
26 powers of the state authority, the project authority, a public-private
27 partnership, and, as necessary, the cabinet with regard to the project.

- 1 (c) The development agreement shall include, at a minimum, all information
2 necessary relating to the creation, development, operation, and disposal of the
3 project. No financial plan shall be submitted or approved which seeks or
4 purports to bind any future General Assembly to appropriate any
5 moneys~~[contains expected appropriations by the General Assembly]~~ beyond
6 those appropriated in the most recently enacted biennial highway construction
7 plan.
- 8 (d) After the proposed project has been approved and set forth in the development
9 agreement, it shall not be changed or expanded without evaluation and
10 approval by the state authority and ratification by the General Assembly.
- 11 (e) Additional agreements may be executed, as necessary, between the state
12 authority, the project authority, a public-private partnership, the department,
13 and the cabinet.
- 14 (9) The provisions of this chapter relating to the duties, responsibilities, powers, and
15 authorities of the state authority shall apply to a project authority or a public-private
16 partnership to the extent that the duties, responsibilities, powers, and authorities are
17 required for the project authority or public-private partnership to carry out its duties
18 and responsibilities under a development agreement.
- 19 (10) Upon retirement of all bonds associated with a project developed under this section
20 or, if the project utilizes a public-private partnership, upon termination of that
21 partnership, the ownership of the project shall be transferred to the Commonwealth
22 pursuant to KRS 175B.095.
- 23 ➔Section 8. Whereas, it is critical for the health, safety, and economic well-being
24 of the Commonwealth and its citizens to not delay any capital projects, an emergency is
25 declared to exist and this Act takes effect upon its passage and approval by the Governor
26 or upon its otherwise becoming a law.